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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,943	12/13/2005	Peter Fuchs	27656/40689	2667
<div>4743      7590      11/25/2008 MARSHALL, GERSTEIN &amp; BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606</div>				
EXAMINER				
HYLTON, ROBIN ANNETTE				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
11/25/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/532,943

**Applicant(s)**

FUCHS, PETER

**Examiner**

ROBIN HYLTON

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-22 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 04 August 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings were received on August 4, 1008. These drawings are not approved as they present **new matter**. It is not clear the location, size, and/or shape of the "snap" elements are depicted as applicant had intended by the initial disclosure.

### *Specification*

2. The disclosure is objected to because of the following informalities: on page 4, cap is referred to using reference characters 2 and 3. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

3. Claims 1-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no disclosure for the closure comprising a spout and a removable cap. The initial disclosure sets forth a container comprising a spout and a removable cap.

4. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It appears the claims are setting forth the structure of the container as structure of the closure. The claimed structure requires clarification.

Claims 2, 6, 9, 16, and 21 set forth "the socket". However, claim 1 sets forth a wrench or socket. When the tool is a wrench in claim 1, there is no antecedent basis for the socket of the dependent claims.

Claim 21 recites the limitation "the circular recess" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1, 4-6, 8, 10-13, 15, 16, 19, 20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Deussen (US 4,134,511). Disclosed is a container **10** has a spout **12** with a twist-away cap **15** and a removable closure **18**. A centering-aid is inherently formed on the outer surface of the spout and the inner surface of the cap as defined by the co-acting shapes.

***Claim Rejections - 35 USC § 103***

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deussen.

Deussen discloses the claimed container except for the conic shape of the first guiding surface and the second guiding surface.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make both the first guiding surface and the second guiding surface of a conic shape since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1976). Doing so provides a mating surface engagement between the spout and cap.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deussen.

Deussen discloses the claimed closure except for mating threads.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the snap fit means with mating threads since the examiner takes Official

Notice of the equivalence of snap on means and mating threads for their use in the art and the selection of any of these known equivalents to would be within the level of ordinary skill in the art. Providing mating threads allows for a more deliberate effort to remove of the cap from the spout.

9. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deussen in view of Bayer (US 4,688,703).

Deussen discloses the claimed container except for the multi-fold symmetry.

Bayer teaches a twist-away element having a multi-fold symmetry.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the twist-away element with a multi-fold symmetry. Doing so allows for better grasping and twisting of the twist-away element.

***Allowable Subject Matter***

10. Claim 2, 9, 14, and 21 appear to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraphs, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

11. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

12. In view of the new grounds of rejection, this Office action is made non-final.

13. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without

Art Unit: 3781

specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art disclosures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 8:00 a.m. to 2:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

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